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Commissioner

DOCKET NO. S-03280A-00-0000

## Respondents.

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

For its proposed order for relief, the Securities Division (the “Division”) of the Arizona Corporation Commission (the “Commission”) alleges that Respondents, singularly and in concert, have engaged in acts, practices and transactions, which constitute violations of A.R.S. § 44-1801 *et seq.*, the Securities Act of Arizona (the “Securities Act”) and A.R.S. § 44-3101 *et seq.*, the Arizona Investment Management Act (the “IM Act”).

The Division alleges as follows:

**I.****JURISDICTION**

1. The Commission has jurisdiction over these matters pursuant to Article XV of the Arizona Constitution, the Securities Act and the IM Act.

**II.****RESPONDENTS**

2. Joseph Michael Guess, Sr. (“Guess”), also known as J. Michael Guess, Michael Guess and Mike Guess, has variously represented himself at relevant times as Manager, Administrator, Managing Partner, Manager Director and Trustee of Respondent RGD; as Administrator, Manager and Manager Director for the Joint Venture Investment Management Program, also known as the Joint Venture Private Placement Asset Management Program, offered and sold through Respondents RGD and Progressive Financial Management; and as Administrator of Respondent RGD Enterprises, Inc. At relevant times, Guess has also conducted business under the name of Respondent Progressive Financial Management. His last known address is 2911 E. Calavar Road, Phoenix, Arizona 85032.

3. Progressive Financial Management (“PFM”), also known as PFM and PFM/J. Michael Guess, is a D. B. A. (doing business as) under which Guess has conducted business as a sole proprietor within or from Arizona. At relevant times, PFM was represented as Manager and Managing Partner of the Joint Venture Investment Management Program. The last known PFM address is 2911 E. Calavar Road, Phoenix, Arizona 85032.

1           4.       James Douglas Sherriffs (“Sherriffs”), also known as James D. Sherriffs and Jim Sherriffs, is  
2 a public accountant and tax preparer whose last known address is 5544 East Helena Drive, Scottsdale,  
3 Arizona 85254. At relevant times, Sherriffs formed and controlled Respondent RGD with Guess and  
4 Respondent Richard Gordon Davis, and had represented himself as President of RGD.

5           5.       Richard Gordon Davis (“Davis”), also known as Richard G. Davis and Dick Davis, was at  
6 relevant times the President, Treasurer, a Director and a shareholder of Respondent RGD Enterprises, Inc.,  
7 and also formed and controlled Respondent RGD with Guess and Sherriffs. His last known address is 4330  
8 North 30<sup>th</sup> Street, Phoenix, Arizona 85016.

9           6.       RGD (“RGD”), also known as R.G.D., was represented as a “Joint Venture” and operated  
10 under the auspices of Respondent RGD Enterprises, Inc. The last known RGD business address is 4330  
11 North 30<sup>th</sup> Street, Phoenix, Arizona 85016. At relevant times, Guess, Sherriffs and Davis formed and  
12 controlled RGD for the purpose of operating the Joint Venture Investment Management Program, also  
13 known as the Joint Venture Private Placement Asset Management Program, in Arizona in conjunction with  
14 Respondents Randall Wayne Smith, Jr. and Bally Overseas Trading Inc.

15           7.       RGD Enterprises, Inc. (“RGD Enterprises”) is an Arizona corporation whose last known  
16 business address is 4330 North 30<sup>th</sup> Street, Phoenix, Arizona 85016.

17           8.       Ira Joe Patterson (“Patterson”), also known as Ira J. Patterson, has acted as a salesman at  
18 relevant times for the Joint Venture Investment Management Program, also known as the Joint Venture  
19 Private Placement Asset Management Program, operated by Guess, PFM, Sherriffs, Davis, RGD, RGD  
20 Enterprises, Randall Wayne Smith, Jr. and Bally Overseas Trading Inc. His last known Arizona address is  
21 4330 North 30<sup>th</sup> Street, Phoenix, Arizona 85016.

22           9.       Randall Wayne Smith, Jr. (“Smith”), also known as Randall W. Smith, has variously  
23 represented himself at relevant times as the Administrator, Joint Venture Manager and Managing Partner of  
24 the Joint Venture Investment Management Program, also known as the Joint Venture Private Placement  
25 Asset Management Program, as well as President, Manager, Managing Partner and Managing Director of  
26 Respondent Bally Overseas Trading Inc. His last known address is 1905 Springlake Court, Birmingham,

1 Alabama 35215.

2 10. Bally Overseas Trading Inc. ("Bally") is a British Virgin Islands company with a  
3 "communications office" at 1905 Springlake Court, Birmingham, Alabama 35215. As Joint Venture  
4 Managing Partner, Bally operated a Joint Venture Investment Management Program, also known as the  
5 Joint Venture Private Placement Asset Management Program, in Arizona through Guess, PFM, Sherriffs,  
6 Davis, RGD, RGD Enterprises, Patterson and Smith.

7 11. Guess, PFM, Sherriffs, Davis, RGD, RGD Enterprises, Patterson, Smith and Bally may be  
8 collectively referred to as "all Respondents."

9 **III.**

10 **FACTS**

11 12. Each of the preceding paragraphs is incorporated by reference.

12 13. From at least February 1997, Smith and Bally offered and sold to the general public within  
13 Arizona financial interests in Joint Venture Investment Management Programs, also known variously as Joint  
14 Venture Private Placement Asset Management Programs and/or Private Placement Investment Trading  
15 Programs and/or Asset Enhancement Programs and/or Asset Enhancement Trading Programs and/or  
16 Capital Management Programs and/or High Yield Investment Programs. According to their offering  
17 documents and related oral representations, offerees could invest money for a period of time as Limited  
18 Venture Partners and their funds pooled for safekeeping in an escrow account with those of other investors  
19 at Regions Bank in Birmingham, Alabama, until transferred to a trading bank for exclusive use in the trading  
20 of discounted debt instruments issued by major world banks. Smith and Bally offered successive programs  
21 with total initial investment principals of from one million to ten million dollars with 108% of each program  
22 principal guaranteed by a top fifty West European Bank. Programs offered weekly or later monthly returns  
23 of trading profits varying respectively from 12% weekly to 12% or even 18% monthly. Smith and/or Bally  
24 would retain a 10% share of such investor profits as a fee for administration. Investors would execute a  
25 Specific Power of Attorney to Smith to manage their program investment account as a fiduciary. On behalf  
26 of Bally, Smith would execute Joint Venture Investment Management Program Agreements or Joint Venture

1 Private Placement Asset Management Agreements with investors, along with Escrow Agreements and Joint  
2 Venture Profit Share Agreements.

3 14. From at least March 1997, Guess, Sherriffs and Davis formed RGD as a "Joint Venture"  
4 under the auspices of RGD Enterprises to offer and sell within and from Arizona the above investment  
5 program operated by Smith and Bally. Guess functioned as RGD manager and lead salesman. Sherriffs  
6 steered his tax preparation clients to invest through RGD and handled the transfer of funds to and from the  
7 RGD bank accounts. Davis provided use of the RGD Enterprises mantle to RGD for tax reporting and other  
8 purposes. On behalf of RGD, Guess executed agreements with investors that tracked the terms of those  
9 used by Smith and Bally, except that RGD reduced the monthly profit returnable to most of its investors to  
10 4.5% or 5%, with only one later investor receiving 10%. These RGD investor agreements in turn provided  
11 for RGD to retain any profits exceeding these investor returns as its fee for administration. Funds from RGD  
12 investors were pooled by Sherriffs in an RGD escrow bank account in Arizona for safekeeping until transfer  
13 to the trading company or trading bank. While so aggregating RGD investor funds, Guess or RGD then  
14 executed agreements with Smith and Bally to invest these funds at the higher 12% weekly or 18% monthly  
15 return on principal offered by the latter. RGD would thereby retain as its profit share the spread between the  
16 returns it offered to its investors and the returns it received from Smith and Bally. RGD investors would  
17 execute a Specific Power of Attorney to Guess to manage their program investment account as a fiduciary.

18 15. Besides the anticipated profit sharing described above, the RGD principals were also paid  
19 directly by Smith to promote their recruitment of investors. In each of the months of April, May, June and  
20 July 1997, Smith sent them about \$31,100 to divide among themselves and others. These payments ceased  
21 after July 1997. Out of the \$124,400 total that Smith provided, Guess, Sherriffs and Davis each took over  
22 \$20,000. Sherriffs did not disclose this compensation he received to those accounting clients who he steered  
23 to invest in the RGD program. A portion of these promotional funds were also paid to some investors as  
24 purported profits earned from their investments. Some of these funds were also used to pay for expenses  
25 incurred in organizing and operating RGD.

26 16. In about July 1997, Patterson acted as a salesman for the RGD program by offering

1 interests to other investors in a claimed \$40,000 Joint Venture Investment Management Program Agreement  
2 dated March 19, 1997 between a “Joseph Patterson” and RGD. Respondent Patterson memorialized these  
3 interests in a “Certificate of Contract” he drafted, executed and provided to each investor as an  
4 “Addendum” to that Joseph Patterson agreement. Respondent Patterson sold these Certificates of Contract  
5 to three investors he recruited for a total of \$80,000 including \$25,000 in personal property accepted in lieu  
6 of cash from one such investor. That same month, Respondent Patterson also was paid at least \$5,000 by  
7 RGD from the last \$31,100 promotional payment provided to its principals by Smith.

8       17.       The halt in monthly payments from Smith after July 1997 caused a shortage of funds for  
9 RGD to make payments. In the second half of August, Patterson solicited an investor for a \$10,000 loan to  
10 RGD repayable in one week with \$500 in interest. The loan principal was paid to Patterson, who in turn  
11 transferred the funds to RGD. Before the end of August, Guess solicited another investor for a \$25,000  
12 “bridge” loan repayable in thirty days with \$12,500 interest. This loan principal was paid directly to RGD.  
13 Both loans constituted the sale of notes. Guess later rolled over the \$25,000 loan principal into a new  
14 investment in the RGD program.

15       18.       By the end of October 1997, Sherriffs was breaking away from the other RGD principals.  
16 Nevertheless, he induced an existing RGD investor couple to transfer another \$150,000 to RGD in early  
17 November for investment purposes. Within ten days and without the prior knowledge or consent of the  
18 investor couple, Sherriffs removed these and other investors’ funds from an RGD bank account to an  
19 unrelated bank account under his control named Strategy Business Trust. He then told the couple he was  
20 renaming RGD and would put their \$150,000 in the Utah-based World Trading Alliance (“WTA”) program  
21 instead of the Bally program because the couple would earn six per cent monthly profits instead of five. Like  
22 the Bally program, the WTA “High Yield Finance Program” promised at least a five per cent monthly profit  
23 return from the Europe-based trading of discounted debt instruments issued by “world class financial  
24 institutions.” Investment in this program would be guaranteed to 108% of principal by a top ten “World  
25 Class Bank.” Sherriffs claimed he held the couple’s \$150,000 in a special bank account until the WTA  
26 program could accept it and promised the couple their investment would earn the five per cent return during

1 this holding period. In early May 1998 WTA notified the couple that its program was initiating active trading  
2 and that disbursement of principal and profits would begin in about seventy days. Between November 1997  
3 and early March 1998, Sherriffs misused more than half of this couple's \$150,000 for his personal and other  
4 business expenses as well as payment of \$10,000 to the couple as purported interest earned on their  
5 principal. On March 5, 1998 he transferred their remaining \$70,000 to WTA without disclosing to the  
6 couple the amount of this transfer or his misuse of the remainder of their principal. In early September 1998  
7 WTA returned the \$70,000 to Sherriffs who then released it back to the investor couple after their repeated  
8 demands for the full repayment of their \$150,000.

9 19. From at least November 1997, Guess used PFM instead of RGD to continue to offer and  
10 sell a similar Joint Venture Investment Management Program within or from Arizona. Under its agreements  
11 with new investors, PFM received their funds for safekeeping until transfer into a trading bank where the  
12 initial principal would be guaranteed to 106% by a top fifty West European Bank. New investors were  
13 variously promised profits of from five up to fifteen percent each four-to-six week "trading cycle," with ten  
14 or twelve cycles per year. PFM was to receive profits earned in excess of the investor share. Instead of  
15 safekeeping the investor funds PFM received, Guess misused them for his personal expenses and for  
16 purported profit distributions to PFM as well as former RGD investors. Doing business as PFM, Guess also  
17 induced an RGD investor to loan \$50,000 to PFM for the exclusive use of a third party for ninety days with  
18 a promise of \$25,000 interest. This loan constituted the sale of a note. However, Guess only paid \$25,000  
19 of the loan proceeds to the third party and misused the remainder for personal expenses.

20 20. At least \$565,000 was raised through RDG from seven individuals or couples who have  
21 since lost over \$236,500. At least \$150,000 was raised through PFM by Guess from five individuals who  
22 have lost about \$138,000.

#### 23 IV.

#### 24 VIOLATION OF A.R.S. § 44-1841

#### 25 (Offer and Sale of Unregistered / Unauthorized Securities)

26 21. Each of the preceding paragraphs is incorporated by reference.

22. From about February 1997 or thereafter, Guess, PFM, Sherriffs, RGD, Patterson, Smith and Bally offered and/or sold securities, within and/or from Arizona, in the form of investment contracts and certificates of participation in a profit-sharing agreement. From August 1997 or thereafter, Guess, PFM, RGD and Patterson also offered and/or sold securities in the form of notes, within and/or from Arizona.

23. The securities referred to above were not registered under A.R.S. §§ 44-1871 through 44-1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been made under A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not offered or sold in exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule or order promulgated by the Commission.

24. This conduct violated A.R.S. § 44-1841.

## V.

### **VIOLATION OF A.R.S. § 44-1842**

#### **(Transactions by Unregistered Dealers and Salesmen)**

25. Each of the preceding paragraphs is incorporated by reference.

26. In connection with the offers to sell and the sale of securities, Guess, PFM, Sherriffs, RGD, Patterson, Smith and Bally acted as dealers and/or salesmen within and/or from Arizona, although not registered pursuant to the provisions of Article 9 of the Securities Act.

27. This conduct violated A.R.S. § 44-1842.

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## VI.

### **VIOLATION OF A.R.S. § 44-1991**

#### **(Fraud in Connection with the Offer and Sale of Securities)**

28. Each of the preceding paragraphs is incorporated by reference.

29. In connection with their offers and sales of securities within and/or from Arizona, all Respondents directly or indirectly made untrue statements of material fact or omitted to state material facts



1 which were necessary in order to make the statements made not misleading in light of the circumstances  
2 under which they were made, within the meaning of A.R.S. § 44-1991, including but not limited to the  
3 following:

4 a) all Respondents made the untrue statement that there was a European trading market for  
5 discounted debt instruments from major banks that generated very high profits with no risk to the  
6 investor, while in fact no such market exists;

7 b) all Respondents made the untrue statement that investor funds would be held in escrow for  
8 safekeeping until transfer to the trading bank, while in fact funds were misused for other purposes;

9 c) all Respondents made the untrue statement that the investment principal would be protected  
10 by a bank guarantee, while in fact no such guarantee could be obtained for funds invested in the  
11 RGD or Bally trading program;

12 d) Guess made the untrue statement that payments to investors were from trading program  
13 profits, while in fact such payments were from misused investment proceeds;

14 e) Guess made the untrue statement that investment funds received from an investor's qualified  
15 Individual Retirement Account ("IRA") would be handled to retain the tax-deferred status, while in  
16 fact the funds were not transferred to a qualified IRA custodian;

17 f) Guess, PFM, Sherriffs, RGD, Patterson and Smith failed to disclose their misuse of investor  
18 funds for personal expenditures;

19 g) Guess, PFM, Sherriffs, RGD, Patterson and Smith failed to disclose their misuse of investor  
20 funds for payments to investors;

21 h) all Respondents failed to disclose the business experience and background of Smith, Guess,  
22 Sherriffs and Davis;

23 i) all Respondents failed to disclose financial statements reflecting the financial condition of  
24 RGD, PFM and Bally.

25 30. In connection with their offers and sales of securities within and/or from Arizona, certain  
26 Respondents directly or indirectly engaged in transactions, practices or courses of business which operated

1 or would operate as a fraud or deceit upon offerees and investors within the meaning of A.R.S. § 44-1991,  
2 including but not limited to the following:

3 a) Guess, PFM, Sherriffs, RGD, Patterson and Smith misused investor proceeds for personal  
4 and other unauthorized uses;

5 b) Guess, PFM, Sherriffs, RGD, Davis, Patterson and Smith misused investor proceeds to  
6 make Ponzi-type payments to investors that were falsely represented as trading profits.

7 31. The above conduct violated A.R.S. § 44-1991.

8 32. During the above violations of A.R.S. § 44-1991, Smith directly or indirectly controlled  
9 Bally within the meaning of A.R.S. § 44-1999. Therefore, Smith is jointly and severally liable to the same  
10 extent as Bally for its violations of A.R.S. § 44-1991.

11 33. During the above violations of A.R.S. § 44-1991, Guess, Sherriffs and Davis directly or  
12 indirectly controlled RGD within the meaning of A.R.S. § 44-1999. Therefore, Guess, Sherriffs and Davis  
13 are jointly and severally liable to the same extent as RGD for its violations of A.R.S. § 44-1991.

14 34. During the above violations of A.R.S. § 44-1991, Guess and Davis directly or indirectly  
15 controlled RGD Enterprises within the meaning of A.R.S. § 44-1999. Therefore, Guess and Davis are  
16 jointly and severally liable to the same extent as RGD Enterprises for its violations of A.R.S. § 44-1991.

17 ...

18 ...

## 19 VII.

### 20 VIOLATION OF A.R.S. § 44-3151

#### 21 (Transactions by Unlicensed Investment Advisers 22 or Investment Adviser Representatives)

23 35. Each of the preceding paragraphs is incorporated by reference.

24 36. From about May 1997, Sherriffs conducted business in Arizona as an investment adviser  
25 and/or investment adviser representative, although neither licensed nor in compliance with the notice  
26 provisions of Article 4 of the IM Act.

37. This conduct violated A.R.S. § 44-3151.

**VIII.**

**VIOLATION OF A.R.S. § 44-3241**

**(Fraud in the Provision of Investment Advisory Services)**

38. Each of the preceding paragraphs is incorporated by reference.

39. In connection with a transaction or transactions within and/or from Arizona involving the provision of investment advisory services, Sherriffs directly or indirectly made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made, within the meaning of A.R.S. § 44-3241, including but not limited to the following:

a) made the untrue statement that there was a European trading market for discounted debt instruments from major banks that generated very high profits with no risk to the investor, while in fact no such market exists;

b) made the untrue statement that RGD investor funds would be held in escrow for safekeeping until transfer to a trading bank, while in fact such funds were misused for other purposes;

c) made the untrue statement to an investor couple that he retained custody in his Strategy Business Trust account of \$150,000 they invested with RGD, while in fact his misused more than half of these funds for his personal and other business expenses as well as payments to the couple of purported interest earned on their principal;

d) failed to disclose to RGD investors that he was receiving compensation from Smith and RGD for his participation in the formation and operation of RGD;

40. In connection with a transaction or transactions within and/or from Arizona involving the provision of investment advisory services, Sherriffs directly or indirectly engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit within the meaning of A.R.S. § 44-3241, including but not limited to the following:

1 a) steered his tax preparation clients to invest with RGD without disclosing he was an RGD  
2 principal who received compensation from Smith and Bally for participating in its formation and operation;

3 b) misused for his personal, business and other uses more than half of the investment funds he  
4 claimed to hold in custody for an investor couple pending transfer to the WTA trading program.

5 41. The above conduct violated A.R.S. § 44-3241.

6 **IX.**

7 **REQUESTED RELIEF**

8 The Division requests that the Commission grant the following relief against each Respondent:

9 1. Order all Respondents to permanently cease and desist from violating the Securities Act and  
10 Sherriffs from violating the IM Act, pursuant to A.R.S. §§ 44-2032 and 44-3292;

11 2. Order all Respondents to take affirmative action to correct the conditions resulting from their  
12 acts, practices or transactions, including without limitation a requirement to make restitution pursuant to,  
13 *inter alia*, A.R.S. §§ 44-2032 and 44-3292;

14 3. Order all Respondents to pay the state of Arizona an administrative penalty of up to five  
15 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

16 4. Order Sherriffs to pay the state of Arizona an administrative penalty of up to one thousand  
17 dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

18 5. Order any other relief that the Commission deems appropriate and authorized by law.

19 **X.**

20 **HEARING OPPORTUNITY**

21 In accordance with A.R.S. §§ 44-1972 and 44-3212 and A.A.C. R14-4-306, Respondents are  
22 notified that each Respondent is afforded an opportunity for a hearing only by filing a written request for a  
23 hearing and cover sheet with Docket Control, Arizona Corporation Commission, 1200 West Washington  
24 Street, Phoenix, Arizona 85007, within 10 days after service of this Notice. Respondents are further  
25 notified that a cover sheet must accompany all filings. Failure to use the cover sheet may result in the delay  
26

1 of processing or the refusal to accept documents. Respondents may obtain a copy of the cover sheet by  
2 calling Docket Control at (602) 542-3477.

3 The date set for the hearing shall be within 15 to 30 days after the request for the hearing has been  
4 docketed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. Any  
5 Respondent who does not request a hearing within the time prescribed is subject to the Commission issuing  
6 an order against that Respondent containing such relief as the Commission deems appropriate, including but  
7 not limited to the relief requested above.

8 Persons with a disability may request a reasonable accommodation such as a sign language  
9 interpreter, as well as request this document in an alternative format, by contacting Cynthia Mercurio-  
10 Sandoval, ADA Coordinator, voice phone number 602/542-0838, e-mail [csandoval@cc.state.az.us](mailto:csandoval@cc.state.az.us).  
11 Requests should be made as early as possible to allow time to arrange the accommodation.

12 Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

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15 Mark Sendrow  
16 Director of Securities  
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